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**UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA**

C.M., on her own behalf and on behalf of her
 minor child, B.M.; et al.

Plaintiffs,

v.

United States of America,

Defendant.

No. 2:19-cv-05217-SRB

**SUPPLEMENT TO
 PLAINTIFFS' MOTION FOR
 SANCTIONS**

A.P.F. on his own behalf and on behalf of his
 minor child, O.B.; et al.

Plaintiffs,

v.

United States of America,

Defendant.

No. 2:20-cv-00065-SRB

1 The *C.M.* and *A.P.F.* Plaintiffs respectfully submit this Supplement in support of their
 2 pending Motion for Sanctions (*C.M.* Dkt. 333; *A.P.F.* Dkt. 328), to inform the Court of an
 3 additional late production of handwritten notes by Defendant and to request that any relief
 4 granted also applies to these notes.

5 On February 21, 2023, Defendant produced to Plaintiffs a batch of handwritten notes
 6 taken by Scott Lloyd, who served as the Director of the Office of Refugee Resettlement
 7 (“ORR”) from March 2017–November 2018.¹ The notes, which are attached as Exhibit A,
 8 are highly relevant to Plaintiffs’ claims. For instance, in an undated note, Lloyd writes that
 9 there is a “[REDACTED]” of “[REDACTED]”
 10 “[REDACTED].” Ex. A, at CD-US-0219829. Lloyd further writes, “[REDACTED]” and
 11 “[REDACTED].” *Id.* Another document (also undated) includes
 12 Lloyd’s handwriting on [REDACTED]
 13 [REDACTED]—which applied to two of the *A.P.F.* Plaintiffs—[REDACTED]
 14 [REDACTED]. *See id.* at CD-US-0219823–24. Lloyd also took
 15 notes on [REDACTED]
 16 [REDACTED].
 17 *See id.* at CD-US-0219825.

18 As with the handwritten notes that are at issue in Plaintiffs’ pending Motion for
 19 Sanctions, Plaintiffs have been prejudiced by the late production of Lloyd’s notes,² as

20 _____
 21 ¹ After Plaintiffs inquired as to the dates of the documents and why the notes had been
 22 produced seven months after the close of fact discovery, Defendant responded: “The
 23 additional notes responsive to Plaintiffs’ final requests for production were recently
 24 discovered by the agency (HHS), and produced to you as promptly as possible. As for the
 dates of the documents, the government cannot provide further information other than what
 is stated on the documents themselves.” Ex. B, Feb. 27, 2023 MacWilliams Email.

25 ² Lloyd’s notes should have been produced to Plaintiffs as part of Defendant’s initial MIDP
 26 responses, *see* Mot. for Sanctions at 3 (*C.M.* Dkt. 333; *A.P.F.* Dkt. 328), and Plaintiffs
 27 specifically requested that Defendant produce, “[f]or the time period of January 1, 2017 to
 28 June 26, 2018, all handwritten notes relating to any policy or practice to separate or
 separately detain immigrant parents and children after apprehension at the Southwest
 Border, or the Zero Tolerance Policy, for the HHS/ORR custodians whose ESI documents

1 Plaintiffs were unable to take these notes into consideration when deciding which witnesses
 2 to depose (including whether to depose Lloyd), what questions to pose to witnesses, or what
 3 documents to question witnesses about. *See SiteLock LLC v. GoDaddy.com LLC*, 2021 WL
 4 2895503, at *9 (D. Ariz. July 9, 2021), *reconsideration denied*, 2021 WL 9597871 (D. Ariz.
 5 July 21, 2021) (imposing sanctions for the disclosure of evidence on the discovery deadline
 6 because belated disclosure prevented a party from pursuing additional, related discovery).
 7 Nor could Plaintiffs “have substantially probed the substance of [Lloyd’s] documents during
 8 depositions,” *Opp.* at 7 (*C.M.* Dkt. 344; *A.P.F.* Dkt. 338), because Plaintiffs did not have
 9 these notes or know about their existence until after the close of fact discovery—and less
 10 than three weeks before the summary judgment deadline.

11 Accordingly, for the reasons stated above and in the Motion for Sanctions, Plaintiffs
 12 respectfully request that the Court include Lloyd’s notes in the relief Plaintiffs requested in
 13 the Motion for Sanctions: (1) that the notes be deemed admitted at trial if offered by
 14 Plaintiffs; and (2) that Defendant be precluded from contesting or otherwise using the late-
 15 produced notes at trial. Given Defendant’s failure to provide basic information about the
 16 notes—such as when they were taken—Plaintiffs further request leave of the Court to depose
 17 Lloyd regarding his late-produced notes.

18
 19 were produced in this matter, *including . . . Scott Lloyd.*” Ex. C, *A.P.F.* RFP No. 27
 20 (emphasis added). Defendant also represented that it was producing all relevant documents
 21 it produced in response to Congressmen Nadler and Pallone’s inquiries from January 2019,
 22 including hardcopy documents from Scott Lloyd. *See* Ex. D, Aug. 28, 2020 MacWilliams
 23 Email at 4 (“

24 [REDACTED]); *see also id.* at 17 (stating
 25 that [REDACTED]

26 [REDACTED] . Moreover, Defendant’s statement that Lloyd’s notes were not produced until 2023
 27 because they “were recently discovered by the agency (HHS),” Ex. B, Feb. 27, 2023
 28 MacWilliams Email, is contradicted by the metadata for the notes, which indicates they were
 collected and scanned in February 2019. *See* Ex. E, Production Log (noting that the
 “DOCDATES” for the pdf versions of Lloyd’s notes—the dates on which the notes appear
 to have been scanned—were February 7 and 11, 2019).

Respectfully submitted this 3rd day of March, 2023.

By /s/ David B. Rosenbaum

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